

Introduced by Senator Margett

February 22, 2005

An act to amend Sections 3063.5 and 11105 of the Penal Code, relating to parole revocation.

LEGISLATIVE COUNSEL'S DIGEST

SB 647, as introduced, Margett. Parole revocation.

Existing law provides that a parolee or his or her attorney may, in parole revocation proceedings, receive copies of any police, arrest, crime report, or child abuse report, as specified, that pertain to the proceeding. Confidential portions need not be disclosed if the parolee or his or her attorney has been notified of the omission.

This bill would extend these disclosure provisions to parole revocation extension proceedings, and would make criminal history information available as well.

Existing law requires the Department of Justice to furnish various agencies and entities with a person's state criminal history information for certain purposes, as specified.

This bill would expand the list of persons entitled to receive criminal history reports to include the attorney of record in a parole revocation or revocation extension proceeding.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3063.5 of the Penal Code is amended to
- 2 read:
- 3 3063.5. In parole revocation *or revocation extension*
- 4 proceedings, a parolee or his or her attorney shall receive a copy

1 of any police, arrest, and crime reports, *criminal history*
2 *information*, and child abuse reports made pursuant to Sections
3 11166 and 11166.2 pertaining to such proceedings. Portions of
4 those reports containing confidential information need not be
5 disclosed if the parolee or his or her attorney has been notified
6 that confidential information has not been disclosed. Portions of
7 child abuse reports made pursuant to Sections 11166 and 11166.2
8 containing identifying information relating to the reporter shall
9 not be disclosed. However, the parolee or his or her attorney shall
10 be notified that information relating to the identity of the reporter
11 has not been disclosed.

12 SEC. 2. Section 11105 of the Penal Code is amended to read:

13 11105. (a) (1) The Department of Justice shall maintain state
14 summary criminal history information.

15 (2) As used in this section:

16 (A) “State summary criminal history information” means the
17 master record of information compiled by the Attorney General
18 pertaining to the identification and criminal history of any
19 person, such as name, date of birth, physical description,
20 fingerprints, photographs, date of arrests, arresting agencies and
21 booking numbers, charges, dispositions, and similar data about
22 the person.

23 (B) “State summary criminal history information” does not
24 refer to records and data compiled by criminal justice agencies
25 other than the Attorney General, nor does it refer to records of
26 complaints to or investigations conducted by, or records of
27 intelligence information or security procedures of, the office of
28 the Attorney General and the Department of Justice.

29 (b) The Attorney General shall furnish state summary criminal
30 history information to any of the following, if needed in the
31 course of their duties, provided that when information is
32 furnished to assist an agency, officer, or official of state or local
33 government, a public utility, or any other entity, in fulfilling
34 employment, certification, or licensing duties, Chapter 1321 of
35 the Statutes of 1974 and Section 432.7 of the Labor Code shall
36 apply:

37 (1) The courts of the state.

38 (2) Peace officers of the state as defined in Section 830.1,
39 subdivisions (a) and (e) of Section 830.2, subdivision (a) of

1 Section 830.3, subdivisions (a) and (b) of Section 830.5, and
2 subdivision (a) of Section 830.31.

3 (3) District attorneys of the state.

4 (4) Prosecuting city attorneys of any city within the state.

5 (5) Probation officers of the state.

6 (6) Parole officers of the state.

7 (7) A public defender or attorney of record when representing
8 a person in proceedings upon a petition for a certificate of
9 rehabilitation and pardon pursuant to Section 4852.08.

10 (8) A public defender or attorney of record when representing
11 a person in a criminal case, *or parole revocation or revocation*
12 *extension proceeding*, and if authorized access by statutory or
13 decisional law.

14 (9) Any agency, officer, or official of the state if the criminal
15 history information is required to implement a statute or
16 regulation that expressly refers to specific criminal conduct
17 applicable to the subject person of the state summary criminal
18 history information, and contains requirements or exclusions, or
19 both, expressly based upon that specified criminal conduct. The
20 agency, officer, or official of the state authorized by this
21 paragraph to receive state summary criminal history information
22 may also transmit fingerprint images and related information to
23 the Department of Justice to be transmitted to the Federal Bureau
24 of Investigation.

25 (10) Any city or county, or city and county, or district, or any
26 officer, or official thereof if access is needed in order to assist
27 that agency, officer, or official in fulfilling employment,
28 certification, or licensing duties, and if the access is specifically
29 authorized by the city council, board of supervisors, or governing
30 board of the city, county, or district if the criminal history
31 information is required to implement a statute, ordinance, or
32 regulation that expressly refers to specific criminal conduct
33 applicable to the subject person of the state summary criminal
34 history information, and contains requirements or exclusions, or
35 both, expressly based upon that specified criminal conduct. The
36 city or county, or city and county, or district, or the officer or
37 official thereof authorized by this paragraph may also transmit
38 fingerprint images and related information to the Department of
39 Justice to be transmitted to the Federal Bureau of Investigation.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4.

(12) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(15) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(16) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(17) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and

1 fingerprint checks, final placement decisions shall be based only
2 on the records obtained pursuant to the fingerprint check.

3 (c) The Attorney General may furnish state summary criminal
4 history information and, when specifically authorized by this
5 subdivision, federal level criminal history information upon a
6 showing of a compelling need to any of the following, provided
7 that when information is furnished to assist an agency, officer, or
8 official of state or local government, a public utility, or any other
9 entity, in fulfilling employment, certification, or licensing duties,
10 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
11 Labor Code shall apply:

12 (1) Any public utility as defined in Section 216 of the Public
13 Utilities Code that operates a nuclear energy facility when access
14 is needed in order to assist in employing persons to work at the
15 facility, provided that, if the Attorney General supplies the data,
16 he or she shall furnish a copy of the data to the person to whom
17 the data relates.

18 (2) To a peace officer of the state other than those included in
19 subdivision (b).

20 (3) To a peace officer of another country.

21 (4) To public officers (other than peace officers) of the United
22 States, other states, or possessions or territories of the United
23 States, provided that access to records similar to state summary
24 criminal history information is expressly authorized by a statute
25 of the United States, other states, or possessions or territories of
26 the United States if the information is needed for the
27 performance of their official duties.

28 (5) To any person when disclosure is requested by a probation,
29 parole, or peace officer with the consent of the subject of the
30 state summary criminal history information and for purposes of
31 furthering the rehabilitation of the subject.

32 (6) The courts of the United States, other states, or territories
33 or possessions of the United States.

34 (7) Peace officers of the United States, other states, or
35 territories or possessions of the United States.

36 (8) To any individual who is the subject of the record
37 requested if needed in conjunction with an application to enter
38 the United States or any foreign nation.

39 (9) (A) Any public utility as defined in Section 216 of the
40 Public Utilities Code, or any cable corporation as defined in

1 subparagraph (B), if receipt of criminal history information is
2 needed in order to assist in employing current or prospective
3 employees, contract employees, or subcontract employees who,
4 in the course of their employment may be seeking entrance to
5 private residences or adjacent grounds. The information provided
6 shall be limited to the record of convictions and any arrest for
7 which the person is released on bail or on his or her own
8 recognizance pending trial.

9 If the Attorney General supplies the data pursuant to this
10 paragraph, the Attorney General shall furnish a copy of the data
11 to the current or prospective employee to whom the data relates.

12 Any information obtained from the state summary criminal
13 history is confidential and the receiving public utility or cable
14 corporation shall not disclose its contents, other than for the
15 purpose for which it was acquired. The state summary criminal
16 history information in the possession of the public utility or cable
17 corporation and all copies made from it shall be destroyed not
18 more than 30 days after employment or promotion or transfer is
19 denied or granted, except for those cases where a current or
20 prospective employee is out on bail or on his or her own
21 recognizance pending trial, in which case the state summary
22 criminal history information and all copies shall be destroyed not
23 more than 30 days after the case is resolved.

24 A violation of this paragraph is a misdemeanor, and shall give
25 the current or prospective employee who is injured by the
26 violation a cause of action against the public utility or cable
27 corporation to recover damages proximately caused by the
28 violations. Any public utility's or cable corporation's request for
29 state summary criminal history information for purposes of
30 employing current or prospective employees who may be seeking
31 entrance to private residences or adjacent grounds in the course
32 of their employment shall be deemed a "compelling need" as
33 required to be shown in this subdivision.

34 Nothing in this section shall be construed as imposing any duty
35 upon public utilities or cable corporations to request state
36 summary criminal history information on any current or
37 prospective employees.

38 (B) For purposes of this paragraph, "cable corporation" means
39 any corporation or firm that transmits or provides television,

1 computer, or telephone services by cable, digital, fiber optic,
2 satellite, or comparable technology to subscribers for a fee.

3 (C) Requests for federal level criminal history information
4 received by the Department of Justice from entities authorized
5 pursuant to subparagraph (A) shall be forwarded to the Federal
6 Bureau of Investigation by the Department of Justice. Federal
7 level criminal history information received or compiled by the
8 Department of Justice may then be disseminated to the entities
9 referenced in subparagraph (A), as authorized by law.

10 (D) (i) Authority for a cable corporation to request state or
11 federal level criminal history information under this paragraph
12 shall commence July 1, 2005.

13 (ii) Authority for a public utility to request federal level
14 criminal history information under this paragraph shall
15 commence July 1, 2005.

16 (10) To any campus of the California State University or the
17 University of California, or any four-year college or university
18 accredited by a regional accreditation organization approved by
19 the United States Department of Education, if needed in
20 conjunction with an application for admission by a convicted
21 felon to any special education program for convicted felons,
22 including, but not limited to, university alternatives and halfway
23 houses. Only conviction information shall be furnished. The
24 college or university may require the convicted felon to be
25 fingerprinted, and any inquiry to the department under this
26 section shall include the convicted felon's fingerprints and any
27 other information specified by the department.

28 (d) Whenever an authorized request for state summary
29 criminal history information pertains to a person whose
30 fingerprints are on file with the Department of Justice and the
31 department has no criminal history of that person, and the
32 information is to be used for employment, licensing, or
33 certification purposes, the fingerprint card accompanying the
34 request for information, if any, may be stamped "no criminal
35 record" and returned to the person or entity making the request.

36 (e) Whenever state summary criminal history information is
37 furnished as the result of an application and is to be used for
38 employment, licensing, or certification purposes, the Department
39 of Justice may charge the person or entity making the request a
40 fee that it determines to be sufficient to reimburse the department

1 for the cost of furnishing the information. In addition, the
2 Department of Justice may add a surcharge to the fee to fund
3 maintenance and improvements to the systems from which the
4 information is obtained. Notwithstanding any other law, any
5 person or entity required to pay a fee to the department for
6 information received under this section may charge the applicant
7 a fee sufficient to reimburse the person or entity for this expense.
8 All moneys received by the department pursuant to this section,
9 Sections 11105.3 and 12054 of the Penal Code, and Section
10 13588 of the Education Code shall be deposited in a special
11 account in the General Fund to be available for expenditure by
12 the department to offset costs incurred pursuant to those sections
13 and for maintenance and improvements to the systems from
14 which the information is obtained upon appropriation by the
15 Legislature.

16 (f) Whenever there is a conflict, the processing of criminal
17 fingerprints and fingerprints of applicants for security guard or
18 alarm agent registrations or firearms qualification permits
19 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
20 of the Business and Professions Code shall take priority over the
21 processing of other applicant fingerprints.

22 (g) It is not a violation of this section to disseminate statistical
23 or research information obtained from a record, provided that the
24 identity of the subject of the record is not disclosed.

25 (h) It is not a violation of this section to include information
26 obtained from a record in (1) a transcript or record of a judicial or
27 administrative proceeding or (2) any other public record if the
28 inclusion of the information in the public record is authorized by
29 a court, statute, or decisional law.

30 (i) Notwithstanding any other law, the Department of Justice
31 or any state or local law enforcement agency may require the
32 submission of fingerprints for the purpose of conducting
33 summary criminal history information checks that are authorized
34 by law.

35 (j) The state summary criminal history information shall
36 include any finding of mental incompetence pursuant to Chapter
37 6 (commencing with Section 1367) of Title 10 of Part 2 arising
38 out of a complaint charging a felony offense specified in Section
39 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided however that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(l) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101 of the Penal Code, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction, provided that the Department of Justice

1 first makes a genuine effort to determine the disposition of the
2 arrest. However, information concerning an arrest shall not be
3 disclosed if the records of the Department of Justice indicate or if
4 the genuine effort reveals that the subject was exonerated,
5 successfully completed a diversion or deferred entry of judgment
6 program, or the arrest was deemed a detention.

7 (m) (1) This subdivision shall apply whenever state or federal
8 summary criminal history information is furnished by the
9 Department of Justice as the result of an application by an
10 authorized agency or organization pursuant to Section 1522,
11 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
12 any statute that incorporates the criteria of any of those sections
13 or this subdivision by reference, and the information is to be used
14 for employment, licensing, or certification purposes.

15 (2) Notwithstanding any other provision of law, whenever
16 state summary criminal history information is furnished pursuant
17 to paragraph (1), the Department of Justice shall disseminate the
18 following information:

19 (A) Every conviction of an offense rendered against the
20 applicant.

21 (B) Every arrest for an offense for which the applicant is
22 presently awaiting trial, whether the applicant is incarcerated or
23 has been released on bail or on his or her own recognizance
24 pending trial.

25 (C) Every arrest for an offense for which the Department of
26 Social Services is required by paragraph (1) of subdivision (a) of
27 Section 1522 of the Health and Safety Code to determine if an
28 applicant has been arrested. However, if the records of the
29 Department of Justice do not contain a disposition for an arrest,
30 the Department of Justice shall first make a genuine effort to
31 determine the disposition of the arrest.

32 (3) Notwithstanding the requirements of the sections
33 referenced in paragraph (1) of this subdivision, the Department
34 of Justice shall not disseminate information about an arrest
35 subsequently deemed a detention or an arrest that resulted in
36 either the successful completion of a diversion program or
37 exoneration.

38 (n) (1) This subdivision shall apply whenever state or federal
39 summary criminal history information, to be used for
40 employment, licensing, or certification purposes, is furnished by

1 the Department of Justice as the result of an application by an
2 authorized agency, organization, or individual pursuant to any of
3 the following:

4 (A) Paragraph (9) of subdivision (c), when the information is
5 to be used by a cable corporation.

6 (B) Section 11105.3 or 11105.4.

7 (C) Section 15660 of the Welfare and Institutions Code.

8 (D) Any statute that incorporates the criteria of any of the
9 statutory provisions listed in subparagraph (A), (B), or (C), or of
10 this subdivision, by reference.

11 (2) With the exception of applications submitted by
12 transportation companies authorized pursuant to Section 11105.3,
13 and notwithstanding any other provision of law, whenever state
14 summary criminal history information is furnished pursuant to
15 paragraph (1), the Department of Justice shall disseminate the
16 following information:

17 (A) Every conviction rendered against the applicant for a
18 violation or attempted violation of any offense specified in
19 subdivision (a) of Section 15660 of the Welfare and Institutions
20 Code. However, with the exception of those offenses for which
21 registration is required pursuant to Section 290, the Department
22 of Justice shall not disseminate information pursuant to this
23 subdivision unless the conviction occurred within 10 years of the
24 date of the agency's request for information or the conviction is
25 over 10 years old but the subject of the request was incarcerated
26 within 10 years of the agency's request for information.

27 (B) Every arrest for a violation or attempted violation of an
28 offense specified in subdivision (a) of Section 15660 of the
29 Welfare and Institutions Code for which the applicant is
30 presently awaiting trial, whether the applicant is incarcerated or
31 has been released on bail or on his or her own recognizance
32 pending trial.

33 (o) (1) This subdivision shall apply whenever state or federal
34 summary criminal history information is furnished by the
35 Department of Justice as the result of an application by an
36 authorized agency or organization pursuant to Section 261 or
37 777.5 of the Financial Code, or any statute that incorporates the
38 criteria of either of those sections or this subdivision by
39 reference, and the information is to be used for employment,
40 licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 777.5 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 777.5 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

1 (s) The provisions of Section 50.12 of Title 28 of the Code of
2 Federal Regulations are to be followed in processing federal
3 criminal history information.

O